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Corporate Participation in Social Debates

Anna Toniolo*

Corporations are increasingly wading into social and political matters that are unrelated to their business operations. This Paper empirically investigates corporate participation in social debates through the corporate response to Dobbs, the Supreme Court's decision overturning the constitutional right to abortion.

First, the Paper identifies and examines the public companies that reacted to the reversal of Roe v. Wade ("Reacting Companies"). Only a few corporations reacted. On the one side, they tend to be large, with sizeable workforces, concentrated in consumer-facing and tech industries, and headquartered in states with no restrictions on abortion rights. On the other side, they tend to have more female representation on the boards and more liberal-leaning CEOs. The findings suggest that companies decided to speak mainly driven by strategic positioning reasons, but leadership's gender and ideology might have facilitated their choice to take a stand on reproductive rights. This view is further supported by the examination of the corporate contributions to the Republican Attorney General Association ("RAGA"), which has been vocal about its fight against abortion rights. More than 20% of the Reacting Companies made anti-abortion donations, even after the reversal of Roe v. Wade, disclosing the potential inconsistency of corporations' political speech.

Second, the Paper focuses on how corporations speak. An empirical survey of the corporate statements in reaction to Dobbs reveals heterogeneous responses. The majority of the statements only announced the coverage of employees' abortion travel expenses ("Employee Statements"). A third of the statements expressed instead a clear political stance in support of abortion rights and against the Supreme Court's ruling ("Political Statements"). Companies that issued Employee Statements were more likely to have Republican-leaning CEOs and to make anti-abortion donations, indicating they may have spoken due to their constituencies' pressure. Political Statements, conversely, tended to be issued by smaller companies and were significantly more likely to be authored by the CEO itself, making it unclear if the CEO was speaking on behalf of the company or expressing a personal belief.

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Overall, the Paper documents that corporations participating in the public discourse are driven by different motives and speak with different and sometimes inconsistent voices. As a result, corporate statements on social and political issues do not represent a meaningful signal of companies' values and cannot mitigate the lack of transparency of corporations' broader political activity.

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“It’s never been more essential for CEOs to have a consistent voice.”

— Larry Fink, 2022 Annual Letter to CEOs

I. INTRODUCTION

The overturn of *Roe v. Wade* sparked a strong reaction of anger and jubilation on the opposite sides of the abortion debate.¹ While anti-abortion groups held celebrations, thousands of demonstrators protested across the United States, condemning the end of the federal right to abortion.² Likewise, political figures from the Democratic and Republican parties showed vigorous and opposite reactions. President Biden said that “the Supreme Court of the United States expressly took away a constitutional right from the American people.” Former President Trump defended

¹ Kate Zernike, Elizabeth Dias & Ruth Graham, *Leaked Threat to Roe v. Wade Stuns, Then Energizes Americans*, N.Y. TIMES (May 3, 2022), <https://perma.cc/2WX7-DH3D>.

² Ellie Silverman et al., *Protests Erupt in D.C., Around the Country as Roe v. Wade Falls*, WASH. POST (June 24, 2022), <https://perma.cc/PY25-7RVR>.

the ruling as “giving rights back when they should have been given long ago.” Then House Speaker Nancy Pelosi stated: “This cruel ruling is outrageous and heart-wrenching.” Senate leader Mitch McConnell defined the decision as “an historic victory for the Constitution and for the most vulnerable in our society.”³

To the contrary, Corporate America—which, in recent years, has been increasingly outspoken on social and political issues—has remained relatively silent⁴ and often declined to comment or take a position.⁵ Even the corporations that have decided to speak were particularly careful in their language, trying to avoid the use of the word “abortion” in favor of more neutral terms like “reproductive healthcare” or “medical procedures.”⁶ Such a reaction is in stark contrast with what happened for other recent political events. In the wake of the Black Lives Matter protests after the killing of George Floyd in the summer of 2020, almost 70% of the Fortune 500 companies issued statements in support of the black community and against racism.⁷ After Russia invaded Ukraine in February 2022, hundreds of U.S. companies took the unprecedented step of withdrawing their business from Russia.⁸

An explanation is that companies are more likely to take a stand on issues that enjoy overwhelming levels of support.⁹ Polls taken during the summer of 2020 demonstrated that most Americans of all races and ages expressed concerns about racism and

³ *Reactions to the Supreme Court Overturning Roe v. Wade*, REUTERS (June 26, 2022), <https://perma.cc/YY5A-UQMF>.

⁴ Alessandro Piazza, *Why Roe v. Wade's Demise – Unlike Gay Rights or Ukraine – Isn't Getting Corporate America to Speak Up*, THE CONVERSATION (June 28, 2022), <https://perma.cc/WBF3-DT77>.

⁵ Emma Goldberg, Alisha Haridasani Gupta & Lauren Hirsch, *Corporate America Doesn't Want to Talk Abortion, but It May Have To*, N.Y. TIMES (May 4, 2022), <https://perma.cc/8QYQ-JUYJ>.

⁶ Marguerite Ward, Avery Hartmans & Áine Cain, *Uber, Nike, Lyft, Disney, JP Morgan and Others Vow to Help Employees Access Abortions after Supreme Court Overturns Roe v. Wade: “We Must Keep up the Fight,”* BUS. INSID. (2022); Emma Goldberg & Lora Kelley, *Companies Are More Vocal Than Ever on Social Issues. Not on Abortion*, N.Y. TIMES ONLINE (2022); Jennifer S. Fan, *Corporations and Abortion Rights in a Post-Dobbs World*, 57 UC DAVIS L. REV. (2024).

⁷ Lisa M. Fairfax, *Racial Rhetoric or Reality? Cautious Optimism on the Link Between Corporate #BLM Speech and Behavior*, 2022 COLUM. BUS. L. REV. 128 (2022).

⁸ Anete Pajuste & Anna Toniolo, *Corporate Response To The War In Ukraine: Stakeholder Governance Or Stakeholder Pressure?*, 10 EMORY CORP. GOVERNANCE & ACCOUNTABILITY REV. 1 (2022).

⁹ Jeffrey Sonnenfeld, Steven Tian & Georgia Hirsty, *A List of Companies Supporting Abortion Rights after the Roe v. Wade Ruling Shows Which Firms Are Stepping up, and Why*, FORTUNE (June 30, 2022), <https://perma.cc/F4XD-KJSA>; Piazza, *supra* note 4.

racial inequality and considered the protests as justified.¹⁰ Likewise, in the aftermath of the Russian invasion, there was a vigorous bipartisan consensus in the U.S. on supporting Ukraine and condemning Putin.¹¹ Abortion, instead, is a deeply divisive issue that encompasses strong moral considerations.¹² As a result, taking a position on it carries the risk of alienating a substantial fraction of the stakeholder base. Consistently, after the leak of the Supreme Court's decision in 2022, PR firm Zeno advised its corporate clients not to issue a statement on abortion, explaining how this was a "no-win" situation where "regardless of what they do, they will alienate at least 15 to 30 percent of their stakeholders."¹³

Additionally, companies increasingly fear backlash. While it is true that, in the last decade, corporate leaders have growingly waded into political issues, more recently, they have experienced intensified pushback for their activism from both sides of the political spectrum.¹⁴ The reversal of *Roe v. Wade* made no exception. On the one side, hundreds of Activision Blizzard employees protested against the overturn of *Roe v. Wade* and demanded protections from the company.¹⁵ On the other side, Concerned Women for America compiled and published a list of "pro-life" brands to replace the ones by companies that announced the coverage of abortion travel costs for their employees.¹⁶ While Texas lawmakers have threatened "swift and decisive action," such as barring corporations from doing business in the state, against companies announcing the coverage of abortion-related expenses.¹⁷

At the same time, the stakeholder demand for corporate public statements on social and political topics is strong, pushing some companies to speak despite the risk of backfiring.¹⁸ Thus,

¹⁰ Fairfax, *supra* note 7, at 155–56.

¹¹ Pajuste & Toniolo, *supra* note 8, at 23.

¹² See *infra* Part III.

¹³ Pavithra Mohan & Julia Herbst, *Why Corporate America Is Afraid to Talk About Abortion*, FAST COMPANY (May 16, 2022), <https://perma.cc/5AWL-2SVX>.

¹⁴ Jill E. Fisch & Jeff Schwartz, *How Did Corporations Get Stuck in Politics and Can They Escape?*, 3 U. CHI. BUS. L. REV. 325 (2024).

¹⁵ Shannon Liao, *Activision Blizzard Staff Walk out, Protesting Loss of Abortion Rights*, WASH. POST (July 21, 2022), <https://perma.cc/8VN7-42TG>.

¹⁶ Concerned Women for America Legislative Action Committee, *Alternative Options to Woke Companies Funding Abortion Travel for Employees* (2022), <https://perma.cc/P3XW-32LN>.

¹⁷ Daniel Wiessner, *Legal Clashes Await U.S. Companies Covering Workers' Abortion Costs*, REUTERS (June 27, 2022).

¹⁸ Anthony J. Casey & Tom Ginsburg, *Kalven For Corporations: Should For-Profit Corporations Adopt Public Statement Policies?*, 3 U. CHI. BUS. L. REV. 305 (2024).

even for an issue as controversial as abortion, some companies decided to speak after the *Dobbs* decision. In the case of reproductive rights, the strongest pressure arguably came from the employees.¹⁹ Companies are aware that the abortion issue, as a health care issue, can considerably impact the labor market. With women making up about half of the workforce, in states with abortion restrictions, companies might face challenges in hiring female talent.²⁰ Melissa Hopley, global chief marketing officer in the Match Group, highlighted exactly this point in reaction to the reversal of *Roe v. Wade*: “This is an economic problem, this is a marketing problem. If you’re in highly visible, highly competitive industries like tech, law, finance, you are all fighting after female talent.”²¹

This Paper uses the corporate reaction to the reversal of *Roe v. Wade* to study how corporations participate in social debates, especially when they are highly contested.

The Paper proceeds as follows. Part II provides an outline of sociopolitical activism. It describes what corporate activism is, its main drivers, predictors and potential effects on the different corporate constituencies. It also discusses how it has evolved and its most recent developments.

Part III explains why abortion rights and the reversal of *Roe v. Wade* provide a good setting for examining corporate activism. First, abortion has strong moral grounds, and it can hardly be related to businesses’ operations. Second, abortion is among the most polarizing and divisive political issues in the U.S., with pro-choice and pro-life sentiments closely aligning with political party affiliations. Part III also presents a brief overview of how abortion has become clearly divided along partisan lines.

Part IV identifies the companies that issued a statement in response to the Supreme Court’s ruling on abortion (“Reacting Companies”) and examines some of their key characteristics. Reacting Companies tend to have a large capitalization and sizeable workforces, to be concentrated in customer-facing and tech industries, and to be headquartered in states with no restrictions on abortion rights. The findings are consistent with the claim that

¹⁹ Even if recent scholarship shows that in the *Dobbs* year there has been also a sizeable increase of shareholder proposals related to abortion and reproductive rights, indicating a possible interest from investors as well. See Fan, *supra* note 6.

²⁰ Goldberg, Gupta & Hirsch, *supra* note 5.

²¹ Emma Goldberg & Lora Kelley, *Companies Are More Vocal Than Ever on Social Issues. Not on Abortion*, N. Y. TIMES (June 24, 2022), <https://perma.cc/Q2W2-N955>.

companies decide to speak on social and political subjects mainly driven by strategic positioning reasons. At the same time, Reacting Companies tend to have a higher female representation on the boards and more liberal-leaning CEOs. This suggests that the leadership's gender and ideology might have facilitated the choice to take a stand on reproductive rights. Furthermore, the Paper investigates whether the Reacting Companies made anti-abortion contributions to test the consistency of their corporate speech. I use as a proxy corporate giving to the Republican Attorney General Association ("RAGA"), an organization that has been on the front line in the fight to overturn *Roe v. Wade*. The findings reveal that almost one-third of the Reacting Companies donated to RAGA between 2018 and 2023, and more than 20% kept on making anti-abortion contributions even after *Dobbs* overturned the constitutional right to abortion.

Part V explores how Reacting Companies spoke. First, it presents an original survey of Reacting Companies' statements in response to *Dobbs*. The survey documents how the statements differ greatly. Many companies just communicated to the employees the coverage of travel expenses for abortion ("Employee Statements"). Others accompanied the healthcare communications with a statement addressing the Supreme Court's decision but tried to be as neutral as possible on abortion rights. One-third of the Reacting Companies took instead a clear political stance in support of reproductive rights and against the Supreme Court's ruling ("Political Statements"). The statements vary also in terms of authorship. Sometimes, it was the company itself who signed the statements; other times, the signer was an executive other than the CEO (frequently an HR officer, expressing the importance of the issue for employees); less often, the statement was authored by the CEO. The survey also shows a wide range of venues for the statements, which could be, for example, the company's website, a social media platform, newspaper articles, or an email to the employees. Second, Part V examines what factors might have led Reacted Companies to issue an Employee Statement or a Political Statement. The findings reveal that companies that made donations to RAGA after *Dobbs* and companies with Republican-leaning CEOs were more likely to issue Employee Statements, while Political Statements were more likely to be released by smaller companies and to be authored or supported by the CEO.

Part VI discusses the paper's contributions. First, the analysis of the corporate statements that followed *Dobbs* indicates that

corporate leaders are getting more cautious in wading into political matters, at least when they are controversial. Not only just a few companies reacted, but the majority of them issued statements that addressed the employees exclusively, while avoiding commenting on the decision or taking a stand on abortion. This is consistent with an emerging phenomenon of companies increasingly staying silent on social and political issues due to the fear of facing serious backlash (so-called “hushing”). Second, the paper reveals that corporate participation in contentious debates is heterogeneous and can show inconsistencies within a company’s broader political speech. In particular, the survey of the corporate statements that followed *Dobbs* documents that corporations use different voices and are driven by different motivations.²² The analysis of the anti-abortion donations demonstrates that, despite the hushing phenomenon, corporate activism is not able to filter only the authentic voices, meaning that investors and other stakeholders cannot easily separate truthful statements from corporate hypocrisy. As a result, corporate statements on social and political issues are not a meaningful signal of a company’s values and cannot mitigate the lack of transparency of corporate political contributions.²³

II. CORPORATE SOCIOPOLITICAL ACTIVISM

Corporate sociopolitical activism (hereinafter also just “corporate activism”) is currently a hot topic in corporate governance, with corporate leaders increasingly taking public positions on social and political issues such as gun control, climate change, gender equality, and LGBTQ rights.²⁴ Corporate activism commonly refers to corporate leaders taking a public stand on social and po-

²² See *infra* Part II.

²³ On the need to require companies to disclose their political spending, see extensively Lucian A. Bebchuk & Robert J. Jackson, *Shining Light on Corporate Political Spending*, 101 GEO. L. J. 923 (2013); Lucian A. Bebchuk et al., *The Untenable Case for Keeping Investors in the Dark*, 10 HARV. BUS. L. REV. 1 (2020); John C. Coates & Taylor Lincoln, *Fulfilling Kennedy’s Promise: Why the SEC Should Mandate Disclosure of Corporate Political Activity* (2011), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1923804.

²⁴ Brian Tayan, David Larcker, Kim Wright-Violich & Stephen Miles, *The Double-Edged Sword of CEO Activism*, ROCK CENTER FOR CORPORATE GOVERNANCE AT STANFORD UNIVERSITY CLOSER LOOK SER. (2018), available at <https://ssrn.com/abstract=3283297>.

litical matters that are not directly related to the firm's business.²⁵ Drawing the line between issues related and unrelated to a firm's business, as well as between "core" and "tangential" issues, is difficult and sometimes might become a matter of framing.²⁶ However, policy changes in areas such as LGBTQ rights, while likely relevant for many firms' employees, would hardly drive a business's financial performance.²⁷

Scholars have identified some elements that differentiate corporate leaders' activism from both more traditional corporate social responsibility (CSR) and more common corporate political activity (CPA), such as lobbying and donation-giving. The key difference between CSR and corporate activism is that the former is low in partisanship, focusing on issues with high societal consensus, while the latter is polarizing, generating responses that are highly dependent on stakeholders' sociopolitical values.²⁸ Corporate activism also differs from more traditional CPA because it is public in nature and purposively visible,²⁹ while CPA is considered a discreet activity that needs to be executed quietly.³⁰ Another point of differentiation is represented by the audience for activism, which is not exclusively policymakers and politicians but also (and perhaps especially) employees, customers, and public opinion at large.³¹

The following events are usually mentioned as representations of corporate activism: Delta Airlines cutting ties with the

²⁵ Donald C. Hambrick & Adam J. Wowak, *CEO Sociopolitical Activism: A Stakeholder Alignment Model*, 46 ACAD. OF MANAGEMENT REV. 33 (2021) ("We define sociopolitical activism . . . as a business leader's personal and public expression of a stance on some matter of current social or political debate, with the primary aims of visibly weighing in on the issue and influencing opinions in the espoused direction."); Aaron K. Chatterji & Michael W. Toffel, *Assessing the Impact of CEO Activism*, 32 ORGANIZATION & ENVIRONMENT 159 (2019) ("Business leaders are increasingly engaging in 'CEO activism' by taking public stands on social and environmental issues that are not directly related to their company's core business (Chatterji & Toffel, 2015, 2018) on topics ranging from climate change to lesbian, gay, bisexual, transgender, and queer (LGBTQ) rights to race relations to gender equality.").

²⁶ Christopher Poliquin & Young Hou, *Policymaker Responses to CEO Activism*, Oct. 18, 2023), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4606719; Hambrick & Wowak, *supra* note 25, at 22.

²⁷ Chatterji & Toffel, *supra* note 25.

²⁸ Yashoda Bhagwat et al., *Corporate Sociopolitical Activism and Firm Value*, 84 J. OF MARKETING 1 (2020).

²⁹ Hambrick & Wowak, *supra* note 25.

³⁰ Bhagwat et al., *supra* note 28.

³¹ Chatterji & Toffel, *supra* note 25. Chatterji and Toffel distinguish CEO activism from other nonmarket strategies based on the actor, who is the individual and not the firm. In this study, I am interested more broadly on corporate activism.

National Rifle Association in the aftermath of a deadly school shooting; Starbucks vowing to hire 10,000 refugees in the wake of President Trump's travel ban; Nike and Papa John's respectively supporting and condemning the National Football League players kneeling during the national anthem as a protest against police brutality.³² Sometimes, it is the CEO who directly engages in the activism. Popular examples are Chick-fil-A's CEO, Dan Cathy, denouncing same-sex marriage; Coca-Cola and Delta Airlines' CEOs opposing a Georgia election law; Goya's CEO denying the legitimacy of the 2020 presidential election; and Disney's CEO criticizing a Florida education law.³³ Other times, corporate leaders act jointly and engage in "collective" activism, like when thirty CEOs urged President Trump not to withdraw from the Paris Agreement or when more than a hundred CEOs co-signed a letter condemning the North Carolina legislative proposal to limit transgender individuals' access to public restrooms.³⁴

Corporate activism might stem from strategic business choices without being aligned with the CEO's ideology.³⁵ Alternatively, it might be motivated by CEOs' personal values, but in that case, it is usually either facilitated or constrained by the CEO's expectations of support from stakeholders, in particular employees and customers.³⁶ In other words, corporate activism might be driven by strategic business choices or by CEOs' personal ideology, but more frequently, it is the result of the alignment of the two factors. In terms of predictors, more powerful CEOs, celebrity CEOs, narcissist CEOs,³⁷ younger CEOs,³⁸ women CEOs, BIPOC, and LGBTQ CEOs are more likely to engage in activism.³⁹ As for firm characteristics, research finds that firm size, CSR index, R&D expense, stock volatility,⁴⁰ market value, and presence of

³² Bhagwat et al., *supra* note 28.

³³ Poliquin & Hou, *supra* note 26.

³⁴ Hambrick & Wowak, *supra* note 25.

³⁵ Swarnodeep Homroy & Shubhashis Gangopadhyay, *Strategic CEO Activism in Polarized Markets*, J. FIN. QUANTITATIVE ANALYSIS 1 (2023).

³⁶ Hambrick & Wowak, *supra* note 25; Anahit Mkrtchyan, Jason Sandvik & Zhiwei Zhu, *CEO Activism and Firm Value* (2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3699082.

³⁷ Hambrick & Wowak, *supra* note 25.

³⁸ Mkrtchyan, Sandvik & Zhu, *supra* note 36.

³⁹ Alison Cook, Christy Glass & Alicia R. Ingersoll, *Who Speaks? Individual and Institutional Predictors of CEO Activism*, 104 SOC. SCI. Q. 521 (2023).

⁴⁰ Mkrtchyan, Sandvik & Zhu, *supra* note 36.

women on the board of directors are positively associated with activism,⁴¹ while leverage is negatively associated with it.⁴²

With respect to stakeholders' response to corporate activism, the literature has focused primarily on customers and employees.⁴³ Customers' reactions are affected by their partisan views on the issue.⁴⁴ Additionally, the activism profitability is compromised if customers perceive "corporate hypocrisy" or "woke-washing."⁴⁵ Likewise, corporate activism's effect on employees will depend on the degree of alignment between the activist's stance and the prevailing ideological tilt of the company's workforce (provided that employees consider the stance credible).⁴⁶

As for the impact of activism on firm value, the empirical evidence provides conflicting results. Some findings show a negative reaction from the shareholders to corporate leaders' decision to engage in activism.⁴⁷ Other studies find that, on average, CEO activism is associated with gains in firm value and increased shareholdings from investors with greater liberal leanings.⁴⁸ A common consideration is that investors' responses to activism are far from uniform, so its impact on shareholder value is difficult to predict.⁴⁹ Investment decisions tend to be more favorable if the activism is consistent with investor position,⁵⁰ if it is more credi-

⁴¹ Cook, Glass & Ingersoll, *supra* note 39.

⁴² Mkrtchyan, Sandvik & Zhu, *supra* note 36.

⁴³ Mascia Bedendo & Linus Siming, *To Advocate or Not to Advocate: Determinants and Financial Consequences of CEO Activism*, 32 BR. J. MANAG. 1062 (2021).

⁴⁴ Hengda Jin et al., *Customers' Response to Firms' Disclosure of Social Stances: Evidence from Voting Reform Laws* (2022), available at <https://www.ssrn.com/abstract=4124518>; Young Hou & Christopher W. Poliquin, *The Effects of CEO Activism: Partisan Consumer Behavior and Its Duration*, 44 STRATEG. MANAG. J. 672 (2023); Chatterji & Toffel, *supra* note 25.

⁴⁵ Daniel Korschun, Anubhav Aggarwal & Hoori Rafieian, *Taking a Stand: Consumer Responses to Corporate Political Activism* (2016), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2806476; Gaia Melloni, Andrea Patacconi & Nick Vikander, *Cashing in on the Culture Wars? CEO Activism, Wokewashing, and Firm Value*, 44 STRATEGIC MANAGEMENT J. 3098 (2023).

⁴⁶ Hambrick & Wowak, *supra* note 25; Vanessa C. Burbano, *The Demotivating Effects of Communicating a Social-Political Stance: Field Experimental Evidence from an Online Labor Market Platform*, 67 MANAG. SCI. 1004 (2021); Anahit Mkrtchyan, Jason Sandvik & Da Xu, *Employee Responses to CEO Activism* (2023), available at <https://www.ssrn.com/abstract=4506862>.

⁴⁷ Bedendo & Siming, *supra* note 43; Bhagwat et al., *supra* note 28.

⁴⁸ Mkrtchyan, Sandvik & Zhu, *supra* note 36; Swarnodeep HomRoy, *All That Is Left to Say: Why Are CEOs Speaking on Social Issues?* (2020), DOI:10.2139/ssrn.3622605.

⁴⁹ Bedendo & Siming, *supra* note 43.

⁵⁰ Michael Thomas Durney et al., *CEO (In)Activism and Investor Decisions* (2020), available at <https://www.ssrn.com/abstract=3604321>.

ble, and if it is about topics related to diversity and the environment.⁵¹ In contrast, activism will more likely generate a negative response if the stances are seemingly risky or counter-normative, if they are on politics,⁵² and if they deviate from the dominant political values of the company's key constituencies.⁵³

In studying corporate activism, it is important to notice that it has evolved over time, and today, it “is a different animal” in comparison with just a decade ago.⁵⁴ Corporations have always been actively involved in the U.S. political process, for instance, by lobbying and making political contributions.⁵⁵ Likewise, they have been present—with different methods and roles—in social activism throughout American history.⁵⁶ However, until a few years ago, corporate leaders would rarely speak up on contested social and political issues, adhering to the so-called Michael Jordan saying that “Republicans buy sneakers too.”⁵⁷ In other words, corporate social activism was mostly considered at odds with the traditional corporate profit motive,⁵⁸ since openly picking sides on divisive conversations could hurt the firm's financial performance.⁵⁹ Recently though, there has been a shift from forms of political engagement that were more covert and focused on traditional business issues to ones that are highly visible and on controversial issues.⁶⁰ Professors Fisch and Schwartz define this new corporate practice of making statements on political topics that have little or no relationship to their operations as “corporate political posturing.”⁶¹

Important factors in the development of this new form of corporate activism have been identified in our society's increased politicization and polarization,⁶² modern information technology, and changing social expectations for corporate leaders.⁶³ First,

⁵¹ Mkrtchyan, Sandvik & Zhu, *supra* note 36.

⁵² *Id.*

⁵³ Bhagwat et al., *supra* note 28.

⁵⁴ Aaron K Chatterji & Michael W Toffel, *Starbucks' "Race Together" Campaign and the Upside of CEO Activism*, HARV. BUS. REV. (2015), <https://perma.cc/ML7N-LVZ4>.

⁵⁵ Aaron K Chatterji & Michael W Toffel, *The New CEO Activists*, HARV. BUS. REV. (2018), <https://perma.cc/H9LG-QUAP>.

⁵⁶ Tom C. W. Lin, *Incorporating Social Activism*, 98 B.U. L. REV. 1535 (2018).

⁵⁷ Chatterji & Toffel, *supra* note 55.

⁵⁸ Mkrtchyan, Sandvik & Zhu, *supra* note 36.

⁵⁹ Chatterji & Toffel, *supra* note 55.

⁶⁰ Cook, Glass & Ingersoll, *supra* note 36.

⁶¹ Fisch & Schwartz, *supra* note 14.

⁶² *Id.*

⁶³ Lin, *supra* note 56.

there has been a significant growth in both the number of issues that are considered political and the public firm divide on those issues along political parties. The result is that firms operate in an increasingly political and polarized environment.⁶⁴ Second, technologies and, in particular, social media platforms enable an immediate and wide spread of information, placing magnified pressure on businesses. Finally, there have been significant changes in social expectations about corporate behavior, with corporate leaders now being increasingly assumed to publicly take social and political stances.⁶⁵ Reports indicate that the large majority of the public expects corporate leaders to publicly engage in debated social and political issues and believe they have a responsibility to speak up.⁶⁶

At the same time, with companies taking more common stances on political issues, the scrutiny over their political activity has increased as well, greatly heightening the chances of blowback.⁶⁷ The backlash against corporate activism—from both political parties and from both stakeholders and politicians—has significantly intensified.⁶⁸ Thus, corporations now need to weigh potential benefits deriving from political posturing against the risk of pushback. As a result, a new phenomenon in corporate activism, known as “hushing,”⁶⁹ appears to be on the rise. Corporate hushing can be defined as a company’s retreat into silence on social and political issues, and it is the result of a cost-benefit analysis assessing the risks stemming from backlash as too severe.⁷⁰

The corporate response to the reversal of *Roe v. Wade* offers a perfect setting to explore corporate political activism in the latest stage of its evolution.

III. ABORTION RIGHTS IN THE POLITICAL SPACE

To examine the current features of corporate participation in the public discourse, I analyze one specific sociopolitical issue:

⁶⁴ Fisch & Schwartz, *supra* note 14.

⁶⁵ Lin, *supra* note 56.

⁶⁶ EDELMAN, *Edelman Trust Barometer: Expectations for CEOs* (2018), <https://perma.cc/MBK4-FHAB>.

⁶⁷ Dorothy S. Lund & Leo E. Strine, *Corporate Political Spending Is Bad Business*, HARV. BUS. REV. (2022), <https://perma.cc/J73F-YLCJ>.

⁶⁸ Fairfax, *supra* note 7; Fisch & Schwartz, *supra* note 14.

⁶⁹ Dan Byrne, *Understanding “Green Hushing” and Its Risks*, COMPLIANCE WEEK, (Nov. 12, 2022, 7:00 AM), <https://perma.cc/YY28-SSM3>.

⁷⁰ Lisa Fairfax, *For Corporate Hypocrisy*, J. CORP. LAW (forthcoming 2024).

abortion rights in the context of the historical reversal of *Roe v. Wade*.⁷¹

In this Section, I set the stage for the empirical analysis by explaining why abortion rights provide an apt context to discuss corporate statements on social and political issues.

First, the concept of abortion is deeply rooted in moral grounds, with moral philosophers extensively debating it.⁷² It is also clearly intertwined with social movements⁷³ and religion.⁷⁴ Thus, abortion can be viewed as a fundamental right necessary to pursue gender equality as well as murder.⁷⁵ At the same time, aside from perhaps a few exceptions, abortion can hardly be imagined as an issue with a direct relationship to a company's operating strategy or industry. If we take a broader business perspective instead, corporate leaders should arguably largely oppose abortion bans.⁷⁶ Reproductive rights have had a huge impact on the labor economy. As recent Nobel Prize Claudia Goldin explains in a seminal paper, birth control pills fueled the fraction of U.S. women entering professional programs in the 1970s.⁷⁷ In 2022, women represented 47.4% of the overall U.S. workforce,⁷⁸ suggesting that in the presence of abortion bans, employers could potentially face difficulties in attracting and retaining almost half of

⁷¹ *Roe v. Wade*, 410 U.S. 113, 164 (1973).

⁷² See JUDITH JARVIS THOMSON, A DEFENSE OF ABORTION (1971); Mary Anne Warren, *On the Moral and Legal Status of Abortion*, 57 THE MONIST 43 (1973); Don Marquis, *Why Abortion Is Immoral*, 86 J. PHILOS. 183 (1989); John T. Noonan Jr., *An Almost Absolute Value in History* in THE MORALITY OF ABORTION: LEGAL AND HISTORICAL PERSPECTIVES 1 (1970) ("What determines when a being is human? When is it lawful to kill? These questions are linked in any consideration of the morality of abortion. They are questions central to any morality for man.").

⁷³ Sally Markowitz, *Abortion and Feminism*, 16 SOC. THEORY PRACT. 1 (1990).

⁷⁴ Second Vatican Council, *Pastoral Constitution On the Church in the Modern World, Gaudium et Spes*, pt. II, Ch. 1 (1965), <https://perma.cc/2N7N-GUFP> ("For God, the Lord of life, has conferred on men the surpassing ministry of safeguarding life in a manner which is worthy of man. Therefore from the moment of its conception life must be guarded with the greatest care while abortion and infanticide are unspeakable crimes.").

⁷⁵ For several examples of lawmakers proposing to charge women receiving abortion for murder, see Blake Ellis & Melanie Hicken, *These Male Politicians Are Pushing for Women Who Receive Abortions to Be Punished with Prison Time*, CNN WIRE SERV. (2022).

⁷⁶ It has been argued that corporations could exploit abortion rights opportunistically either as a leverage in the employee context or to increase their bottom line avoiding to pay for maternity leave. See Katelyn Fossett, *Should Companies Be in Charge of Abortion Access?*, POLITICO (2022); Fan, *supra* note 6.

⁷⁷ Claudia Goldin & Lawrence F. Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110 J. POLITICAL ECON. 730 (2002).

⁷⁸ *Women in The Workforce*, U.S. GOV. ACCOUNTABILITY OFFICE (2023), <https://perma.cc/U3FU-PQDR>.

their talent. Put differently, abortion is a controversial issue that leaves ample room for profit motives and moral motives to clash.

Second, abortion is one of the most contested and divisive issues in U.S. politics.⁷⁹ In an increasingly polarized political environment, not only is abortion “uniquely polarized,” but the attitude toward abortion is currently one of the best predictors of someone’s party affiliation.⁸⁰ Namely, Democrats are largely perceived as pro-choice and Republicans as pro-life.⁸¹ Gallup’s most recent trends on U.S. views about abortion by party identification clearly show it.⁸² While in 1995, 51% of Republicans considered themselves as pro-life and 42% as pro-choice, in 2023, the percentages are 76% and 21%. As for Democrats, in 1995, 58% identified as pro-choice and 33% as pro-life, while in 2023, the numbers are respectively 84% and 15% (the peak in the gap was reached in 2022, with 88% pro-choice and only 10% pro-life).⁸³ Moreover, as legal historian Mary Ziegler underlines, the abortion issue “divides the United States by region, religion, and race,”⁸⁴ and we can also add gender, age, education, and income. As Gallup’s “Pro-Choice” or “Pro-Life” Demographic Table displays, pro-choice identification is significantly higher among women, younger people, people of color, postgraduates and college graduates, higher household incomes, West and East (in comparison with Midwest and, especially, South), and less religious people.⁸⁵ Because of these well-defined divisions, I think that the abortion issue allows us to see more clearly where the different constituencies of a company stand and whether political beliefs might have influenced a business decision.

Abortion has not always been a subject of partisan contention.⁸⁶ Conversely, when, in 1973, the Supreme Court decided *Roe*

⁷⁹ Darren Lenard Hutchinson, *Thinly Rooted: Dobbs, Tradition, and Reproductive Justice*, 65 ARIZ. L. REV. 385 (2023); Danny Osborne et al., *Abortion Attitudes: An Overview of Demographic and Ideological Differences*, 43 POLIT. PSYCHOL. 29 (2022).

⁸⁰ MARY ZIEGLER, *ROE: THE HISTORY OF A NATIONAL OBSESSION* 151 (2023).

⁸¹ Edward G. Carmines, Jessica C. Gerrity & Michael W. Wagner, *How Abortion Became a Partisan Issue: Media Coverage of the Interest Group-Political Party Connection*, 38 POLITICS & POLICY 1135 (2010).

⁸² *Abortion Trends by Party Identification*, GALLUP (Feb. 7, 2024) <https://perma.cc/FXD7-XNTG>.

⁸³ *Id.*

⁸⁴ ZIEGLER, *supra* note 80.

⁸⁵ “Pro-Choice” or “Pro-Life” Demographic Table, GALLUP (Feb. 7, 2024), <https://perma.cc/83DM-9UDP>.

⁸⁶ Osborne et al., *supra* note 79.

v. Wade, holding that a woman has a fundamental right to abortion, it was not clear where the two parties stood on the issue.⁸⁷ And that is not surprising, given that the traditionally conservative values of individual rights and limited government could have well been aligned with the pro-choice position.⁸⁸ However, in the late 1970s, conservatives founded the Family Values movement, which opposed changes that could alter the traditional model of family, such as abortion, and this contributed to solidifying pro-life positions as Republican.⁸⁹ In the 1980s, the parties began to get increasingly divided along the issue, and by the 1992 election, pro-choice and pro-life advocates had become clearly and consistently sorted along partisan lines, where Republicans oppose while Democrats support abortion.⁹⁰

Roe v. Wade has remained through the years the “seminal precedent and the political anchor for abortion rights.”⁹¹ Its prominence also stayed intact after the Supreme Court weakened the precedent in 1992 by ruling in *Planned Parenthood of Southeastern Pennsylvania v. Casey*⁹² that states could regulate abortion throughout the pregnancy as long as they did not impose an undue burden on women.⁹³ Despite its centrality, *Roe v. Wade* did not settle the issue of the constitutionality of abortion,⁹⁴ and conversely, it ignited the activism of both sides of the controversy and became the prime target of the conservative movement.

Almost fifty years later, on May 2, 2022, in an unprecedented event, Justice Alito’s initial draft opinion leaked from the Supreme Court, showing that the Justices were going to overturn *Roe v. Wade*.⁹⁵ On June 24, 2022, the publication of *Dobbs v. Jackson Women’s Health Organization* confirmed that the Supreme

⁸⁷ Edward G. Carmines, Jessica C. Gerrity & Michael W. Wagner, *supra* note 76.

⁸⁸ Osborne et al., *supra* note 79.

⁸⁹ Hutchinson, *supra* note 79.

⁹⁰ Osborne et al., *supra* note 79.

⁹¹ Jaina D Green, *Abortion Regulations: An Avenue for Abolishing Abortion?*, 48 SOUTH. U. L. REV. 399 (2021).

⁹² *Planned Parenthood v. Casey*, 505 U.S. 833, 873–74 (1992).

⁹³ Hutchinson, *supra* note 79.

⁹⁴ R. C. Oliveri, *Crossing the Line: The Political and Moral Battle over Late-Term Abortion*, 10 YALE J. L. & FEMINISM 397 (1998).

⁹⁵ Josh Gerstein & Alexander Ward, *Supreme Court Has Voted to Overturn Abortion Rights, Draft Opinion Shows*, POLITICO (May 2, 2022), <https://perma.cc/Q25U-DQ6Q> (“No draft decision in the modern history of the court has been disclosed publicly while a case was still pending. The unprecedented revelation is bound to intensify the debate over what was already the most controversial case on the docket this term.”).

Court overruled *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*.⁹⁶

As predicted, the decision sparked a surge of political protests, with a considerable portion directed toward the Supreme Court.⁹⁷ At the time of the decision, Gallup found that Americans were largely opposed to overturning *Roe v. Wade*, with a steady 58% majority wanting the precedent to stand.⁹⁸ After *Dobbs*, the greatest number of voters than in any past election indicated that abortion was an important factor in their vote,⁹⁹ and the number of people considering it as the “most important problem” facing the country kept on reaching record highs.¹⁰⁰

The Paper examines how corporate America reacted to the Supreme Court’s ruling.

IV. WHO DID SPEAK IN RESPONSE TO *DOBBS*?

This Part analyzes what corporations decided to speak in response to *Dobbs*. Section IV.A describes the construction of my dataset of companies that reacted to *Dobbs* (the “Reacting Companies”). Section IV.B examines the Reacting Companies by looking at firm characteristics, CEOs’ characteristics, and anti-abortion political contributions. Section IV.C explores possible drivers of Reacting Companies’ decision to speak.

A. Reacting Companies

To construct my sample of companies that reacted, I first used the Rhia Ventures database and the Yale School of Management Chief Executive Leadership Institute database.¹⁰¹ The Rhia Ventures’ #WhatAreYourReproBenefits database tracks more broadly corporate responses to abortion bans, collecting abortion

⁹⁶ *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 229 (2022).

⁹⁷ Hutchinson, *supra* note 79.

⁹⁸ Megan Brenan, *Steady 58% of Americans Do Not Want Roe v. Wade Overturned*, GALLUP (June 2, 2022), <https://perma.cc/2LR3-9W7Q>.

⁹⁹ Jeffrey M. Jones, *Abortion Poised to Be a Bigger Voting Issue Than in Past*, GALLUP (June 6, 2022) <https://perma.cc/C83K-NRTL>.

¹⁰⁰ Frank Newport, *Abortion Moves Up on “Most Important Problem” List*, GALLUP, (Aug. 1, 2022), <https://perma.cc/8PP2-54JQ>.

¹⁰¹ Rhia Ventures, #WhatAreYourReproBenefits, <https://perma.cc/2HT8-RTUW>; YALE SCHOOL OF MANAGEMENT CHIEF EXECUTIVE LEADERSHIP INSTITUTE, *Companies with Extended Women’s Health Benefits*, <https://perma.cc/B8N3-J3EP>.

care policies and statements in support of reproductive rights.¹⁰² The Yale School of Management Chief Executive Leadership Institute database “Companies with Extended Women’s Health Benefits” studies “the 118 first movers on the response to the Supreme Court’s overruling of *Roe v Wade*’s abortion protection.”¹⁰³ I augmented the initial list with additional companies from reports and newspaper articles.¹⁰⁴

I then applied a number of exclusion criteria. First, I wanted to focus on U.S. public companies, so I excluded from my sample private companies and companies incorporated or headquartered outside the United States. Second, I excluded corporations for which a statement in response to *Dobbs* was not available in the public domain. The final dataset includes 117 U.S. public companies that reacted to *Dobbs* (the “Reacting Companies”). To be sure, while diligent efforts were made, I cannot entirely exclude that I missed a few U.S. public firms that issued a statement in reaction to *Dobbs*. At the same time, the sample I constructed should capture all the public companies that reacted in a reasonable time after the reversal of *Roe v. Wade*.

The first observation is that very few companies reacted. Unlike what happened in the recent past for other social issues, the vast majority of corporations were silent on abortion.¹⁰⁵ In light of the generally “muted” corporate response,¹⁰⁶ I examine who are the companies that actually spoke after the Supreme Court decision.

B. Who Are The Reacting Companies?

i. Firms’ Characteristics

First, I investigate some key characteristics of the Reacting Companies by examining them against a larger sample of U.S.

¹⁰² *Id.* As they clarify, “The database only includes policies publicly disclosed by companies, publicly reported on, or shared directly with us by company management with permission to post.”

¹⁰³ Jeffrey Sonnenfeld, Steven Tian & Georgia Hirsty, *supra* note 9.

¹⁰⁴ See, e.g., *Corporate Misalignment on Abortion with 527 Spending*, CENTER FOR POLITICAL ACCOUNTABILITY (2022); Emma Goldberg, *These Companies Will Cover Travel Expenses for Employee Abortions*, N.Y. TIMES (Aug. 19, 2022), <https://perma.cc/B8D4-V3KU>.

¹⁰⁵ Fan, *supra* note 6 highlights how not a single corporations filed an *amicus* brief in *Dobbs*, in contrast with the almost hundred that were filed protesting the so-called Muslim Ban and almost four hundred that were filed in *United States v. Windsor*.

¹⁰⁶ Goldberg & Kelley, *supra* note 6.

public companies. To construct this sample, I began by extracting the whole Compustat North America company universe from January 2022 to December 2023.¹⁰⁷ I then linked it with BoardEx using WRDS BoardEx CRSP Compustat Link.¹⁰⁸ After excluding companies without a ticker or headquartered outside the United States, I was left with 4219 unique firms (the “Compustat/BoardEx Sample”). I finally merged the two samples with a Reacted variable equal to 1 for the Reacting Companies and to 0 for all the other companies (Not Reacting).

I compared the two groups using the following variables: size, industry, number of employees, abortion restrictions in the headquarters state, and percentage of women on the board of directors.

I retrieved data on size, industry, number of employees, and headquartered state from Compustat. As for the size, Compustat provides the annual company-level market value in millions (mkvalt). Additionally, in terms of size, I specify whether a company is included in the S&P 500 index, which tracks the stock performance of 500 firms among the largest U.S. public companies. For the industry, I used the Global Industry Classification Standard (GICS), which is the industry taxonomy developed by MSCI and is largely utilized in the financial community.¹⁰⁹ In particular, I employed the sector-level classifications (GICS 2-digit). The Compustat variable “Employees” represents the number (in thousands) of company workers as reported to the shareholders. Finally, Compustat indicates the companies’ headquarters state (State/Province). I collected those data and then labeled the states based on abortion policies in effect after the reversal of *Roe v. Wade*. To do so, I followed the classification created by the Guttmacher Institute.¹¹⁰ Although they include seven policy categories,¹¹¹ I place my sample firms in one of two categories. The

¹⁰⁷ *S&P Global Market Intelligence*, WHARTON RESEARCH DATA SERVICES, <https://wrds-www.wharton.upenn.edu/pages/get-data/compustat-capital-iq-standard-poors/compustat/>.

¹⁰⁸ *Linking BoardEx with Compustat*, WHARTON RESEARCH DATA SERVICES, <https://wrds-www.wharton.upenn.edu/pages/wrds-research/database-linking-matrix/linking-boardex-with-compustat/>.

¹⁰⁹ *The Global Industry Classification Standard (GICS®)*, MSCI (2023), <https://perma.cc/TF29-NP8A>.

¹¹⁰ *Interactive Map: US Abortion Policies and Access After Roe*, GUTTMACHER INSTITUTE (last visited Mar. 25, 2024), <https://perma.cc/4HWJ-2Y6D>.

¹¹¹ *Id.* (“The seven policy categories are: Most restrictive: State bans abortion completely or has an early gestational age ban along with other restrictions that make it extremely challenging to access care; Very restrictive: State has multiple restrictions and early gestational age ban; Restrictive: State has multiple restrictions and later gestational

first is “Restrictive,” which includes states with “Most restrictive,” “Very restrictive,” “Restrictive,” and “Some Restrictions/Some Protections” policies, according to the Guttmacher Institute. The second is “Protective,” which includes states with “Most protective,” “Very protective,” and “Protective” policies, according to the Guttmacher Institute.

From BoardEx, I obtained the number of women on the board of directors. More in detail, the BoardEx variable “Gender Ratio” indicates the proportion of male directors at the Annual Report Date selected, that, in my case, was 2022. In my analysis, I indicate the female ratio instead.

Table 1 provides descriptive statistics distinguishing between Reacting and Not Reacting companies.

Table 1. Summary Statistics Reacting Companies

Panel A.

| | <i>Reacting</i> Mean | <i>Not Reacting</i> Mean | Diff. |
|-----------------------|-------------------------|-----------------------------|----------------|
| Market Value (\$M) | 126933.69† | 6458.88† | -120553.892*** |
| S&P 500 | 0.57 | 0.10 | -0.476*** |
| Employees | 101.98 | 9.65 | -92.322*** |
| Abortion Restrictions | 0.27 | 0.42 | 0.146*** |
| Female Ratio | 0.36 | 0.25 | -0.102*** |
| Observations | 117 | 4219 | |

* $p < 0.1$, ** $p < 0.05$, *** $p <$

0.01

†Median=27068.89

††Median=606.9929

Panel B.

| Industry Name | Code | <i>Reacting</i> | | <i>Not Reacting</i> | |
|---------------|------|-----------------|---------|---------------------|---------|
| | | Freq. | Percent | Freq. | Percent |
| Energy | 10 | 0 | 0.00 | 197 | 4.76 |
| Materials | 15 | 1 | 0.85 | 150 | 3.63 |

age ban; Some restrictions/protections: State either has a few restrictions or protections, or has a combination of restrictive and protective policies; Protective: State has some protective policies; Very protective: State has most of the protective policies; Most protective: State has all or almost all of the protective policies.”).

| | | | | | |
|---------------|----|-----|--------|------|--------|
| Industrials | 20 | 6 | 5.13 | 540 | 13.05 |
| Consumer Dis- | 25 | | | | |
| cretionary | | 31 | 26.50 | 427 | 10.32 |
| Consumer Sta- | 30 | | | | |
| ples | | 7 | 5.98 | 165 | 3.99 |
| Healthcare | 35 | 10 | 8.55 | 991 | 23.95 |
| Financials | 40 | 21 | 17.95 | 728 | 17.60 |
| IT | 45 | 15 | 12.82 | 489 | 11.82 |
| Communication | 50 | | | | |
| Services | | 23 | 19.66 | 160 | 3.87 |
| Utilities | 55 | 1 | 0.85 | 84 | 2.03 |
| Real Estate | 60 | 2 | 1.71 | 206 | 4.98 |
| <i>Total</i> | | 117 | 100.00 | 4137 | 100.00 |

From Panel A of Table 1, we observe that Reacting Companies are significantly larger in size. Mean and median market capitalization of Reacting Companies are, respectively, \$127 billion and \$27 billion, compared to \$6 billion and \$600 million for the rest of the sample. Consistently, Reacting Companies are significantly more likely to be among the S&P 500, with 67 Reacting Companies out of 117 (meaning almost 60%) included in the index. Reacting Companies are not only large, but they also employ a significantly greater number of employees. As for the headquarters, the companies that responded to the Supreme Court's decision are largely located in states with no abortion restrictions. Finally, Reacting Companies have higher female representation on their boards of directors. As Panel A underscores in the last column, all the differences are statistically significant at the 1% level.

Panel B of Table 1 describes the different distribution among industries of reacting and not reacting firms. Consumer Discretionary is the sector with the highest number of Reacting Companies (31). The whole tech sector, representing the combination of the Information Technology and Communication Services GICS sectors, comprises 38 companies, or more than 32% of the Reacting Companies. The Financials sector is also well populated, with 21 companies. On the contrary, capex-intensive industries are sparsely represented, with the combination of Energy, Materials, and Industrials sectors reaching only 7 companies overall.

ii. CEOs' Characteristics

Next, I will examine the characteristics of Reacting Companies' CEOs to assess whether their identity and beliefs could have played a role in their decision to react.

First, I looked at the gender identity of the CEOs using Gender API and then manually checked whenever the results had less than 90% of accuracy.¹¹² I find that 16 companies out of 117 are led by a woman. At first glance, it might not look like a relevant amount. Yet, it should be kept in mind that very few CEOs have reacted at all¹¹³ and that, at the time of *Dobbs*, only 44 of the Fortune 500 companies had a female CEO.¹¹⁴

Second, I look at the political affiliation of Reacting Companies' CEOs. To gauge a CEO's ideological leaning, I use partisan political donations. I collected the data on CEOs' political contributions by manually checking for each of them on the OpenSecrets' Donor Lookup database.¹¹⁵ The database includes FEC's records of receipts from all donors who contribute at least \$200 and identify partisan contributions, qualifying them as Democratic or Republican. Most CEOs contribute to both parties but donate more to one of them.¹¹⁶ Thus, for each CEO, I calculate the total of their partisan donations, and then, I classify a CEO as supporting one party if at least 60% of partisan donations are directed to that party. To make sure to effectively capture CEOs' political ideology, in order to qualify a CEO as Democrat-Leaning or Republican-Leaning, they needed to have more than 3 partisan contributions for an amount of at least \$5,000. I also qualify as *Super-Democrat* or *Super-Republican* CEOs who gave more than \$50,000 in partisan donations if more than 90% of those were directed to one party over the other.

Using these thresholds, 67 CEOs out of 117 have a political affiliation, with 48 classified as Democrat-Leaning and 19 as Republican-Leaning. Among the Democrat-Leaning, 16 are Super

¹¹² *Gender API*, GENDER API, <https://perma.cc/TG2M-WQGT>.

¹¹³ Interestingly, Professor Fan suggests that the modest corporate response to *Dobbs* can be explained, at least partially, by the lack of women in corporations' leadership positions. See Fan, *supra* note 6 at 829, n.39. See also more broadly Afra Afsharipour & Darren Rosenblum, *Power and Pay in the C-Suite*, INEQUAL. INQ. (2021), <https://lawandinequality.org/wp-content/uploads/2021/09/Power-and-Pay-in-the-C-Suite.pdf>.

¹¹⁴ Emma Hinchliffe, *The Number of Women Running Fortune 500 Companies Reaches a Record High*, FORTUNE (May 23, 2022), <https://perma.cc/8LVP-2FC3/>.

¹¹⁵ *OpenSecrets. Following the Money in Politics*, OPENSECRETS, <https://www.opensecrets.org/donor-lookup>.

¹¹⁶ Alma Cohen et al., *The Politics of CEOs*, 11 J. LEG. ANAL. 1 (2019).

Democrats. Among the Republican-Leaning, 6 are Super Republican. The data is surprising. As the literature shows, in the U.S., CEOs contribute disproportionately more to the Republican Party and its candidates than to the Democratic ones.¹¹⁷ More in detail, Cohen et al. find that Republican CEOs (defined as such if they direct at least two-thirds of their donations to Republican candidates) are three times as many as Democratic ones.¹¹⁸ In my sample, there are more than twice as many Democratic CEOs as Republican ones.

iii. Anti-Abortion Political Contributions

In the aftermath of *Dobbs*, newspapers and reports documented how numerous companies—including several that claimed to support reproductive rights—were funding the effort to introduce extreme abortion bans around the U.S.¹¹⁹ For instance, the Guardian and Open Secrets examine how Corporate PACs of companies that pledged to cover travel expenses for abortions provided significant financial support to politicians supporting abortion bans across the country.¹²⁰

Thus, in examining the characteristics of the Reacting Companies, I think it is relevant to consider whether they made anti-abortion political contributions. As a proxy, I decided to use corporate political contributions to the Republican Attorney General Association (RAGA). On the one side, RAGA is a 527 committee (so-called 527s are non-profit, tax-exempt organizations regulated by section 527 of the Internal Revenue Code); thereby, businesses are allowed to funnel unlimited amounts of corporate funds.¹²¹ On the other side, RAGA's fundraising activity has a

¹¹⁷ Elisabeth Kempf, Vyacheslav Fos & Margarita Tsoutsoura, *The Political Polarization of Corporate America* (Chicago Booth, Research Paper No. 12-14, 2022), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4154770.

¹¹⁸ Cohen et al., *supra* note 118.

¹¹⁹ Judd Legum & Rebecca Crosby, *These 13 Corporations Have Spent \$15 Million Supporting Anti-Abortion Politicians Since 2016*, POPULAR INFORMATION (May 4, 2022), <https://perma.cc/7YTY-LEP5>; Nick Robins-Early, *Amazon and Google Fund Anti-Abortion Lawmakers through Complex Shell Game*, THE GUARDIAN (June 3, 2023), <https://perma.cc/97UF-CLRD>.

¹²⁰ Stephanie Kirchgaessner & Lauren Aratani, *These Companies Claim to Support Abortion Rights. They Are Backing Anti-Abortion Republicans*, THE GUARDIAN (Nov. 6, 2022), <https://perma.cc/6GCM-8KFA>; Srijita Datta, *Corporate PACs Contributed over a Million Dollars to Lawmakers Who Opposed Abortion Rights Bill*, OPEN SECRETS (July 14, 2022), <https://perma.cc/L683-F95K>.

¹²¹ CENTER FOR POLITICAL ACCOUNTABILITY, *supra* note 104 (showing how after *Citizens United* the corporate contributions to these organizations have seen a sustained

clear link to anti-abortion causes. RAGA coordinates work by its members, Republican attorneys general,¹²² who have played a key role in the fight against abortion rights that culminated in *Dobbs*.¹²³ Furthermore, RAGA itself explicitly declared in its fundraising emails that: “Every donation will help Republican Attorneys General combat the Democrats’ pro-abortion agenda and stand tall for life.”¹²⁴ This makes it less vulnerable to the common objection that donations to Republican organizations are directed more broadly to the Republican Party without implying the endorsement of any specific policy positions.¹²⁵

I obtained the data on corporate political contributions to RAGA—and to its Democratic counterpart, the Democratic Attorneys General Association (DAGA)—from the Center on Political Accountability. The dataset contains all the contributions from public companies to RAGA and DAGA from January 2018 to December 2023.

growth). PACs contributions, in contrast, do not come from corporate treasuries but from managers, employees and shareholders.

¹²² *About RAGA*, REPUBLICAN ATTORNEYS GENERAL (2024), <https://perma.cc/365U-JJYE> (“RAGA elects and re-elects Republican attorneys general nationally”).

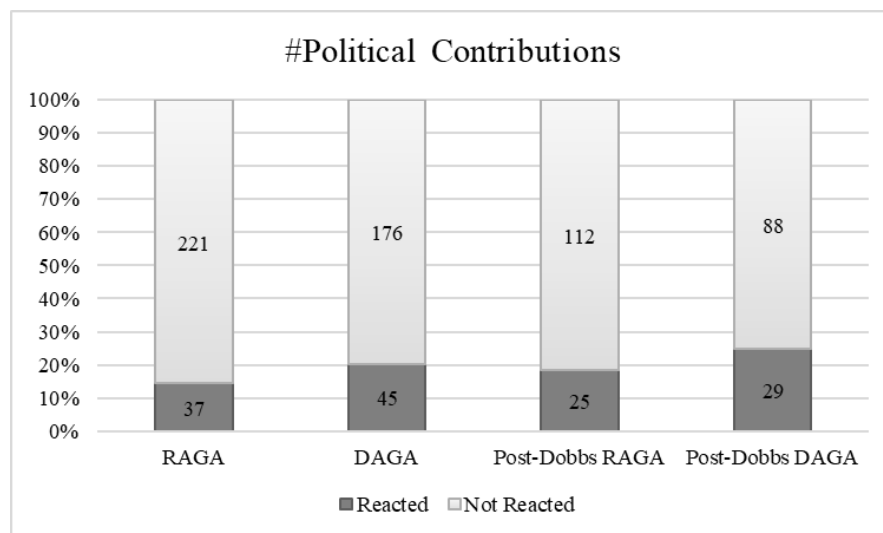
¹²³ Heidi Welsh, *Divided States of America: Heavily Tilted Company Support for State Abortion Ban Politicians*, SUSTAINABLE INVESTMENTS INSTITUTE (2022).

¹²⁴ Documented (@ItsDocumented), X (July 15, 2022, 11:16 PM), <https://perma.cc/VU6C-4JAH>. On the role of RAGA in the fight against abortion rights, see more broadly Judd Legum, *The Hypocrisy of Abortion as a Corporate Perk*, POPULAR INFORMATION (June 27, 2022), <https://perma.cc/NJB9-VK22>.

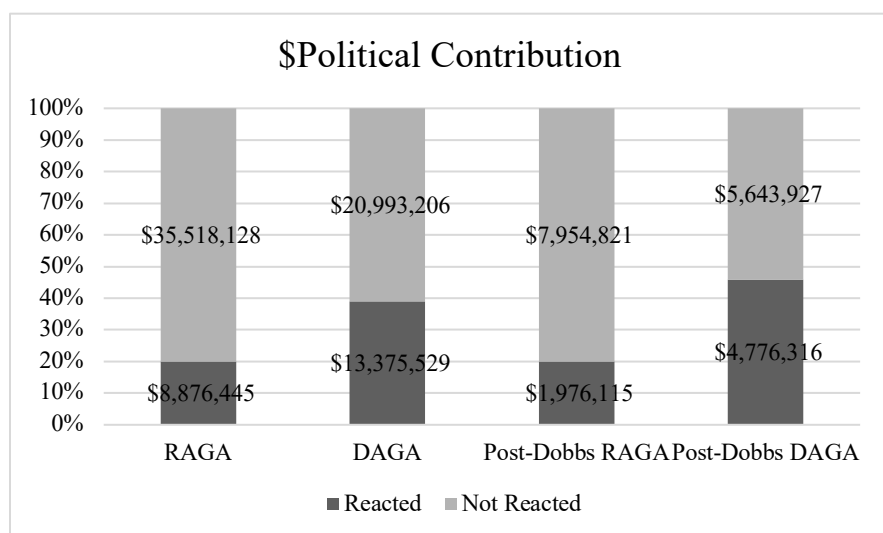
¹²⁵ Robins-Early, *supra* note 119.

Figure 1. Political Contributions to RAGA and DAGA

Panel A.



Panel B.



As Figure 1 reports, from 2018 to 2023, 258 unique public companies donated to RAGA, a total amount of over \$44 million, while 221 public companies donated to DAGA, a total amount of over \$34 million. The numbers of donors are fairly similar, and there is a big overlap of corporations that donate to both organizations, consistent with the view that firms make contributions to both parties as a defensive tactic aimed at staving off additional regulation.¹²⁶ At the same time, RAGA received a significantly larger dollar amount of political giving. However, if we look exclusively at the donations made after *Dobbs*, the situation reverses, with slightly greater contributions to DAGA, confirming how contributions to RAGA were perceived as anti-abortion. With the increased public scrutiny that followed the reversal of *Roe v. Wade*, many public companies refrained from donating in order to not be associated with anti-abortion campaigns.

Against this backdrop, it is interesting to see if and how much the Reacting Companies donated to RAGA, especially after the reversal of *Roe v. Wade*. As Panel A of Figure 1 reports, 37 Reacting Companies out of 117 (or more than 30%) donated to RAGA between 2018 and 2023, representing 14% of all RAGA's corporate donors. The number goes down to 25 after *Dobbs*, meaning 21% of the Reacting Companies, but it is still significant considering that it represents almost 20% of RAGA's total donors and that only a few public companies responded to the Supreme Court's decision. It is even more remarkable if we look at the monetary amount of the contributions. Panel B of Figure 1 shows how the Reacting Companies' donations accounted for 20% of the total amount of donations that RAGA received from public companies (both considering the total amount from 2018 to 2023 or only the contributions post-*Dobbs*).

C. What Did Drive The Decision to React?

As a threshold point, it is important to highlight that this Paper does not include regressions and does not claim any causal inference. Nonetheless, the analysis offers insights into the main drivers of companies' decisions to react to *Dobbs*.

First, the results on size, industry and headquarters state indicate that companies' strategic considerations might have been

¹²⁶ Stephen M. Bainbridge, *THE PROFIT MOTIVE: DEFENDING SHAREHOLDER VALUE MAXIMIZATION* (2023).

at the core of the choice to release a statement in response to the Supreme Court's decision.

Reacting Companies' size—here understood in a broad sense including market value, belonging to the S&P 500 index, and number of employees—is significantly larger than the one of the other companies. An explanation is that large corporations are more constrained by reputational considerations, being both more exposed to public scrutiny and media coverage and more affected by negative publicity.¹²⁷ Moreover, large firms – especially the ones with visible rents – attract more political attention and have consequently more reasons to dodge political animosity.¹²⁸

The firms' distribution among industries also suggests that the choice to respond might have often been connected to the business of the company in an attempt to appeal to stakeholders with a pro-choice social preference. It is not surprising that Consumer Discretionary is the most populated sector among Reacting Companies since not only are consumer-facing firms more attentive to reputation and public opinion, but it is also among the industries with the highest percentage of female employees.¹²⁹ As for the tech sector, it has significantly younger employees than average,¹³⁰ and, as reported above, younger individuals are considerably more favorable to abortion rights. Likewise, in the professional and financial sectors, there are strong incentives to attract positive attention from customers and investors belonging to the younger generation.¹³¹

As for the geographical distribution, less than 30% of the Reacting Companies are headquartered in states with abortion restrictions in place. More than 70% are instead located in states with protective policies, with a majority of them in states with very protective policies, such as California and New York. Thus, most of the Reacting Companies are headquartered in liberal states, where the legislature, governor's office, and the majority of the electorate are Democratic.

¹²⁷ Kobi Kastiel & Yaron Nili, *The Corporate Governance Gap*, 131 YALE L. J. 782, 809 (2022).

¹²⁸ Mark J. Roe, *Corporate Purpose and Corporate Competition*, 99 WASH. UNIV. LAW REV. 223 (2021) (effectively talking of “purpose as lobbying”).

¹²⁹ Yijia Chen, *More Women at Work: Historical Perspectives*, MORGAN STANLEY (Mar. 2023), <https://perma.cc/732H-KA8P>.

¹³⁰ Jeffrey Sonnenfeld, Steven Tian & Georgia Hirsty, *supra* note 9.

¹³¹ Michal Barzuza, Quinn Curtis & David H. Webber, *The Millennial Corporation: Strong Stakeholders, Weak Managers*, 28 STAN. J. L. BUS. & FIN. 255 (2023).

On the other hand, Reacting Companies have a significantly higher number of women on their boards of directors. Moreover, among the CEOs with a political affiliation, more than 70% are Democratic-leaning, while research shows that CEOs of U.S. public companies are disproportionately more Republican. The findings posit that while Reacting Companies were primarily motivated by strategic reasons, the leadership's gender and ideology might have eased the decision to take a stand on reproductive rights. More in detail, as Section V.B. will show, the CEO's political affiliation might have been particularly influential on the statement's level of intensity.

The analysis of the anti-abortion political contributions confirms this view. As highlighted above, despite only a few companies responding to the Supreme Court's decision on reproductive rights, more than 30% of the Reacting Companies donated to RAGA between 2018 and 2023, and more than 20% kept on donating after *Dobbs*. Moreover, despite the fact that the total amount of contributions to RAGA from U.S. public companies decreased dramatically after the ruling, Reacting Companies still represent 20% of RAGA's overall corporate giving. The evidence is consistent with the notion that companies reacted to the reversal of *Roe v. Wade* for strategic reasons, wanting to appeal to stakeholders with a pro-choice social preference, but their statements do not reflect the company's stance on the issue.

V. HOW DID CORPORATIONS SPEAK?

This Part explores how Reacting Companies spoke and possible drivers for the statements' different intensities.

A. Survey of Reacting Companies' Statements

This Section introduces an empirical survey of the statements issued by the Reacting Companies in response to *Dobbs*.

The survey gathers data on statements made by and on behalf of such corporations that were available in the public domain. Sources include corporate websites, social media accounts, newspaper articles, emails or memos to the company's employees, and other kinds of communications that became available to the public following the leak of the Supreme Court's decision.

The survey reveals how the corporate response varied greatly by content, delivery, and authorship.

In terms of content, roughly 55% of the Reacting Companies only address the employees, informing them about the firm's

health care policies affecting reproductive rights, usually mentioning the coverage of out-of-state travel expenses (“Employee Statements”).

More in detail, some companies announced the creation of new policies as a result of the decision. For example, Citigroup, in its 2022 Proxy Statement, declared: “In response to changes in reproductive healthcare laws in certain states in the U.S., beginning in 2022, we provide travel benefits to facilitate access to adequate resources.”¹³² Sometimes, the statement details the dollar amount of the coverage, while other times, it just states an intention to offer travel expense reimbursements.¹³³ Other companies preferred to expand existing policies in order to include abortion. Bank of America, for instance, proclaimed: “We have expanded the list of medical treatments that are eligible for travel expense reimbursement. This list will now include cancer treatment, organ transplants at centers of excellence, reproductive health care including abortion, and hospital admissions for mental health conditions.”¹³⁴ Finally, other firms, such as General Motors, clarified how their policies already covered reproductive rights and, therefore, there was no need to implement any change.¹³⁵

Less than half of the Reacting Companies went beyond just communicating travel expenses coverage for employees and explicitly commented on the Supreme Court decision, but they did that with different tones and intensity.

On the one hand, some companies offered support in view of the impact of the decision or acknowledged the difficulty of the issue and the different views people have on it, but they avoided taking a clear stance. An example is Abercrombie’s statement:

There are no words to capture everything we’re feeling. Like you, we’re feeling so much right now. We’re a company of real people. . . with real emotions. We know people are passionate about this topic, and we will receive mixed responses to this post. However, we are taking action to provide support for our associates—on whatever

¹³² *Citigroup Inc. 2022 Notice of Annual Meeting and Proxy Statement*, CITIGROUP INC. (Apr. 26, 2022), <https://perma.cc/UE7N-K3SD>.

¹³³ An example is Meta: “We intend to offer travel expense reimbursements, to the extent permitted by law, for employees who will need them to access out-of-state health care and reproductive services. We are in the process of assessing how best to do so given the legal complexities involved.” See Goldberg, *supra* note 104.

¹³⁴ *Id.*

¹³⁵ Tom Krisher, *GM’s Barra Talks Electric Vehicles, Future*, AP NEWS (Jul. 18, 2022), <https://perma.cc/X8ZP-6ZYB>.

journey they may be on when making their own choices.¹³⁶

Similarly, EA's executive team stated: "Today, the U.S. Supreme Court overruled *Roe v. Wade* regarding abortion in the United States. We know this issue matters, generating a range of emotions for you and your loved ones."¹³⁷ Some companies are invited to express different beliefs on the topic through the democratic process. An example is the statement released by IBM:

Abortion is a deeply personal topic and reproductive health decisions are shaped by each individual's unique beliefs and experiences. We urge civility and mutual respect in the national debate. IBM employees who wish to speak out on this issue, whatever their views, are encouraged to communicate directly through the democratic process on an individual basis.¹³⁸

Along the same lines is Ulta Beauty's statement:

While the Supreme Court's ruling directly impacts women and families, we continue to closely monitor the situation and will continue evaluating how we can best support our associates should other issues impact communities within the Ulta Beauty family. As always, we encourage our teams and our guests to learn more and act on issues important to them by making their voice heard and their vote count.¹³⁹

On the other hand, other statements voiced, unambiguously, a political viewpoint on the decision. I classify these Statements as "Political Statements." A clear example is Amalgamated Bank: "With its recent decision, the Supreme Court has completely dismissed a half century of settled law and revoked a fundamental right to essential reproductive health care. This is a devastating and dangerous blow for millions of Americans, particularly underserved communities, people of color, rural families, LGBTQ individuals and immigrants."¹⁴⁰ Along the same lines, Victoria's Secret's statement reads:

¹³⁶ Abercrombie, INSTAGRAM (2022), <https://perma.cc/H2YX-W3DX?type=image>.

¹³⁷ Electronic Arts, *Putting Employee Health Front and Center*, ELECTRONIC ARTS (June 24, 2022), <https://perma.cc/G3WT-VRMW>.

¹³⁸ *IBM Reacts to the U.S. Supreme Court Ruling on Roe vs. Wade*, IBM (June 28, 2022), <https://perma.cc/8VQT-A5KX>.

¹³⁹ Jessica Harrington, *The Beauty Brands Covering Travel Expenses For Abortion Care*, POPSUGAR (June 30, 2022), <https://perma.cc/3VLD-CV53>.

¹⁴⁰ *Amalgamated Bank Statement on Dobbs vs Jackson Supreme Court Ruling*, AMALGAMATED BANK (June 24, 2022), <https://perma.cc/PE5U-ECX9>.

As a company committed to being an advocate for women and championing their journeys, we believe a woman's right to self-determination is fundamental. . . . For those reasons VS&Co supports a woman's right to choose, including equal access to safe reproductive and abortion care provided by medical professionals. We support choice, because we believe in women and trust them to make decisions that are right for them.¹⁴¹

Another example is the statement that Bumble released after the leak of the decision: "We are dismayed by the rumors of the Supreme Court decision that was leaked last night. At Bumble, we believe strongly in women's right to choose and exercise complete control over their bodies."¹⁴² Likewise, the Chief Human Resources Officer at Alnylam Pharmaceuticals stated in her LinkedIn profile:

Alnylam stands for every woman's right to control and make choices regarding their own bodies. Yesterday's Supreme Court decision is devastating, a regression of women's rights and scary as to what more could come. I'm so proud to lead within an organization that is willing to stand up unabashedly for what we believe.¹⁴³

Interestingly, some Reacting Companies made a business case for the support of reproductive rights. A perfect example is Levi Strauss, which released a statement titled: "Protecting Reproductive Rights—A Business Imperative."¹⁴⁴ The statement reads:

Access to reproductive health care, including abortion, has been a critical factor to the workplace gains and contributions women have made over the past 50 years. Further restricting or criminalizing access will jeopardize that progress and disproportionately affect women of color, putting their well-being at risk and impeding diverse hiring pipelines But women make up 58 per-

¹⁴¹ *Our Responses. Reproductive Rights*, Victoria's Secret & Co., <https://perma.cc/2LVQ-BSEQ>.

¹⁴² Bumble, *Bumble Inc. Statement on Leaked Supreme Court Opinion on Abortion Rights*, (May 3, 2022) <https://perma.cc/393N-7PLR>.

¹⁴³ Kelley Boucher, LINKEDIN, <https://perma.cc/AZ8R-2337>.

¹⁴⁴ Levi Strauss & Co., *Protecting Reproductive Rights – A Business Imperative*, (May 4, 2022), <https://perma.cc/366B-ZP5U>.

cent of our global workforce, and in recent years, numerous employees have expressed to leadership their growing alarm over the rollback of all forms of reproductive care.

To strengthen the argument, the company also highlights how there was wide public support for maintaining a constitutional right to abortion: “Our position is also aligned with majority public opinion. In recent polling, 60 percent of Americans stated that the Supreme Court should uphold *Roe v. Wade* and three-quarters said abortion decisions should be left to women and their doctor.”¹⁴⁵

Several corporations pledged to make donations to organizations promoting reproductive rights. For instance, in its statement on *Dobbs*, in addition to ensuring the covering of employees travel expenses, Gilead communicated that “the Gilead Foundation will donate \$1.5 million in support of organizations focused on reproductive health services. We have also initiated a special matching donation program where the Gilead Foundation will double any contributions made by individual employees up to the limit of \$15,000.”¹⁴⁶

With respect to the vehicle for the statement, some companies posted it on their website, many sent an email or a memo to the employees, others replied to a media inquiry, and others reacted through a social media post in one or more of the most used platforms (i.e., Facebook, Instagram, LinkedIn, X). Finally, the statements differed in terms of authorship. Many statements were signed by the company itself.¹⁴⁷ When in response to a media inquiry, the author was often a not better identified spokesperson.¹⁴⁸ Several statements were signed by executives other than the CEO, usually HR officers and usually women.¹⁴⁹ Finally, about one third of the statements were authored by the CEO or saw an involvement of the CEO that, for example, would share the company’s statement or issue an additional statement.

CEOs’ statements differed considerably in their tenor and form as well. Some communications were exclusively directed to

¹⁴⁵ *Id.*

¹⁴⁶ Gilead Statement on U.S. Supreme Court Overturning *Roe v. Wade*, GILEAD (June 24, 2022), <https://perma.cc/PS5L-R59N>.

¹⁴⁷ E.L.F. Beauty, LINKEDIN, <https://perma.cc/ZB2Y-FUPA>.

¹⁴⁸ Kyle Wiggers, *Tech Companies Respond to US Supreme Court Abortion Decision*, (June 24, 2022), <https://perma.cc/C4EH-D6QE>.

¹⁴⁹ See, e.g., IBM, *supra* note 138.

the employees, and therefore did not require taking a strong political stand on the issue. For example, Dick's Sporting Goods' CEO, Lauren Hobart, in a LinkedIn post stated:

Today, the Supreme Court announced a decision to overturn *Roe v. Wade*, removing the federal right to an abortion and leaving the decision up to each state. . . . We recognize people feel passionately about this topic—and that there are teammates and athletes who will not agree with this decision. However, we also recognize that decisions involving health and families are deeply personal and made with thoughtful consideration.¹⁵⁰

Others managed to take a clear political stance, even if the statement was formally addressed to the employees. For example, Jonah Peretti, BuzzFeed's CEO, in an email to his employees said:

I'm writing to share in the outrage that so many of you are feeling about today's U.S. Supreme Court decision on *Roe v. Wade*. The decision is so regressive and horrific for women that it compels us to step up as a company to ensure that any of our employees who are impacted have funding and access to safe abortions as needed.¹⁵¹

Likewise, the co-CEOs of Allbirds:

Dear 'Birds, Abortion rights is not a topic that we express outwardly as a brand, but it is one that directly affects the rights and lives of our employees, and hence, we want to address this directly and quickly. Tomorrow, over half our country will wake up with fewer rights than the day before, or even decades ago. This feels counter to the progress for equity and self-autonomy we expect and demand.¹⁵²

Other CEOs were even more vocal, using their social media to clearly express the company's position on the Supreme Court's decision. For example, Vimeo's CEO, in her LinkedIn profile wrote:

¹⁵⁰ Lauren Hobart, LINKEDIN, <https://perma.cc/Q44E-UA3S>.

¹⁵¹ Linda Carroll, *These Companies Will Pay for Abortion-Related Travel for Employees*, TODAY (June 30, 2022), <https://perma.cc/9QFZ-2K35>.

¹⁵² Joseph Zwilling, LINKEDIN, <https://perma.cc/M9HM-KA2Y>.

Today the U.S. Supreme Court overturned *Roe v Wade*—eliminating the federal, constitutional right to an abortion and leaving the decision up to each state. I am deeply saddened by this decision. I believe that access to abortion is part of basic healthcare; that it is not only a fundamental human right, but also a vital part of building an inclusive and high-functioning society. This is a step backward for both our individual freedoms and our collective prosperity. At Vimeo we support any health-related decision that an individual makes for themselves. We don't support taking that freedom away from our employees.¹⁵³

Likewise, Hewlett Packard Enterprise Company's CEO tweeted:

Restricting a woman's ability and choices in obtaining health care is inequitable and harmful to the advancement of women. Our @HPE values compel us to stand up for a woman's right to choose. As a company, we must continue to stand for unconditional inclusion and for the advancement of an equitable workplace.¹⁵⁴

Yelp CEO Jeremy Stoppelman, who had already been vocal on other social issues in the past, invited other corporate leaders to speak out against abortion bans: "Today's SCOTUS ruling puts women's health in jeopardy, denies them their human rights, and threatens to dismantle the progress we've made toward gender equality in the workplace since *Roe*. Business leaders must speak out now and call on Congress to codify *Roe* into law."¹⁵⁵

Finally, CEOs of companies headquartered in states where now abortion could be severely restricted threatened to move the business elsewhere. That is what tweeted Duolingo's CEO: "To all Pennsylvania politicians: I love that @duolingo is headquartered in Pittsburgh and that y'all use it as an example that successful tech companies can start here. If PA makes abortion illegal, we won't be able to attract talent and we'll have to grow our offices

¹⁵³ Anjali Sud, LINKEDIN, <https://perma.cc/U5ME-ZKZB>.

¹⁵⁴ Antonio Neri (@AntonioNeri_HPE), X (June 25, 2022, 1:15 PM), <https://perma.cc/PYE2-W9VU>.

¹⁵⁵ Jeremy Stoppelman (@jeremys), X (June 24, 2022, 11:36 AM), <https://perma.cc/7MG9-VX48>.

elsewhere.”¹⁵⁶ Likewise, Marc Benioff, CEO of Salesforce, in an interview, said “he’s debating on pulling the business, an enterprise cloud computing company, out of cities and states with “crazy” politicians that don’t support “equality and dignity.””¹⁵⁷

Overall, the survey shows how the corporate statements issued after the reversal of *Roe v. Wade* do not reflect a collective or homogenous sentiment. Reacting Companies spoke with different voices, and the last Section of the empirical analysis attempts to identify possible drivers for the decision to release an Employee Statement or a Political Statement.

B. What Did Drive The Statements’ Intensity?

As the survey under Section V.A documents, Reacting Companies spoke with different intensities. Among the 117 corporate statements, 65 (or 56%) just communicated to the employees the coverage of abortion travel expenses (Employee Statements), while 31 (or 27%) took a strong political stance (Political Statements). Moreover, precisely one-third of the statements (or 39) saw the involvement of the company’s CEO, who either issued the statement itself, further commented on the statements, or accompanied it with an additional one (CEO Involvement).

This Section reviews Reacting Companies’ characteristics presented above under Section IV.B based on the degree of intensity of their statement. In particular, Table 2 displays descriptive statistics for the companies that issued respectively Employee Statements (Panel A) and Political Statements (Panel B).

Panel A of Table 2 reports how companies issuing an Employee Statement were more likely to be in the S&P500 index and significantly more likely to make an anti-abortion contribution after the reversal of *Roe v. Wade*. Furthermore, their CEOs were more likely to be Republican-leaning and significantly less likely to be involved with the statement on reproductive rights. Panel B of Table 2 exhibits the results for Political Statements. Companies issuing these statements tend to be smaller, with fewer companies in the S&P 500 index and fewer employees. They were also less likely to make anti-abortion donations after *Dobbs* and significantly more likely to have the CEO involved.

¹⁵⁶ Luis von Ahn (@LuisvonAhn), X (June 24, 2022, 4:47 PM), <https://perma.cc/E5H3-BHEB>.

¹⁵⁷ Olivia Rondeau, *Salesforce CEO Marc Benioff Threatens to Pull Company from Indiana over Abortion Restrictions*, PM. (Sept. 25, 2022), <https://perma.cc/P77W-S8RE>.

Table 2. Summary Statistics Employee and Political Statements

Panel A.

Summary Statistics

| | <i>Employee</i> Mean | <i>Not Employee</i> Mean | Diff. |
|------------------------|-------------------------|-----------------------------|------------|
| Market Value (\$M) | 166850.56 | 77624.63 | -89225.929 |
| SP500 | 0.66 | 0.46 | -0.200** |
| Female Ratio | 0.34 | 0.37 | 0.032 |
| Employees | 125.86 | 72.58 | -53.286 |
| Abortion Restrictions | 0.29 | 0.25 | -0.042 |
| Post <i>Dobbs</i> RAGA | 0.31 | 0.10 | -0.212*** |
| CEO Dem | 0.38 | 0.44 | 0.058 |
| CEO Rep | 0.22 | 0.10 | -0.119* |
| CEO Super Dem | 0.12 | 0.15 | 0.031 |
| CEO Super Rep | 0.08 | 0.00 | -0.077** |
| CEO Involvement | 0.18 | 0.52 | 0.335*** |
| Observations | 65 | 52 | 117 |

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Panel B.

Summary Statistics

| | <i>Political</i> Mean | <i>Not Political</i> Mean | Diff. |
|------------------------|--------------------------|------------------------------|--------------|
| Market Value (\$M) | 20648.53 | 166630.56 | 145982.035** |
| SP500 | 0.42 | 0.63 | 0.209** |
| Female Ratio | 0.38 | 0.35 | -0.032 |
| Employees | 17.61 | 132.75 | 115.140** |
| Abortion Restrictions | 0.19 | 0.30 | 0.109 |
| Post <i>Dobbs</i> RAGA | 0.06 | 0.27 | 0.203** |
| CEO Dem | 0.45 | 0.40 | -0.056 |
| CEO Rep | 0.10 | 0.19 | 0.089 |
| CEO Super Dem | 0.23 | 0.10 | -0.121* |
| CEO Super Rep | 0.00 | 0.06 | 0.058 |
| CEO Involvement | 0.58 | 0.24 | -0.336*** |
| Observations | 31 | 86 | 117 |

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

The data suggest that Employee Statements might have been the favorite solution for companies that would have preferred not

to take a stand on abortion and did not want the firm to be associated with a position on the issue but felt pressured to say something, at least to their employees. Consistently, several companies kept on contributing to RAGA even after donations to the organization were clearly depicted as “anti-abortion.” Namely, more than 30% of the companies issuing an Employee Statement donated to RAGA after *Dobbs*, and 80% of the Reacting Companies that donated to RAGA after *Dobbs* issued an Employee Statement. On the other hand, almost 70% of the companies issuing an Employee Statement belong to the S&P 500 index and, therefore, are subject to heightened public scrutiny and are more sensitive to stakeholder pressure. In these cases, corporations probably tried to keep the statement as agnostic as possible on the controversial abortion issue and avoided having the CEO—who was often Republican or even Super-Republican—involved.

As for the Political Statements, the smaller size and workforce probably facilitated the decision to take a clear political stance on the Supreme Court’s decision. Moreover, almost 60% of the Political Statements were issued or supported by the CEO. To this point, it is worth highlighting that Reacting Companies issuing Political Statements had a higher number of Democratic-leaning CEOs (even though the difference is not statistically significant) and a significantly higher number of “Super Democratic” CEOs. Thus, it seems reasonable to argue that the CEO’s ideology might have affected the choice of the statement’s intensity.

VI. CONTRIBUTIONS AND CONCLUSIONS

The corporate response to the reversal of *Roe v. Wade* can inform the debate over corporate participation in the public discourse in two ways.

First, the reaction to *Dobbs*, in comparison with other political events, confirms that corporations might be pulling back from wading into political matters, at least when controversial. As politicization and polarization of society deepen, more and more issues also in the business realm are first characterized as political and, second, labeled according to a binary partisan divide.¹⁵⁸ As a result, even when taking a single political stance, corporations are defined either as liberal or conservative, and this significantly increases the risk of blowback.¹⁵⁹ Thus, we are witnessing an

¹⁵⁸ Fisch & Schwartz, *supra* note 14.

¹⁵⁹ *Id.*

emerging phenomenon of corporations deciding to retreat into silence after assessing the risks and benefits of speaking out on social and political issues (so-called “hushing”).¹⁶⁰

The corporate response to abortion rights perfectly displays the phenomenon. Not only a few, and mostly high-profile customer-facing, companies reacted. Also, this Paper’s survey shows how more than half of the companies that reacted actually tried to depict their statements as not political at all. Many addressed exclusively the employees and crafted the statements as communications of health care benefits unrelated to politics and the Supreme Court’s decision. However, in the current polarized environment, corporate announcements of coverage for abortion travel expenses were perceived as political. Citigroup is an emblematic example. After the annual proxy statement revealed the company’s policy of paying for employee travel costs related to seeking an abortion, the CEO clarified: “I want to be clear that this benefit isn’t intended to be a statement about a very sensitive issue.”¹⁶¹ However, Republican lawmakers severely condemned the company’s decision which they considered to be a promotion of the liberal political agenda:

By choosing to underwrite travel to abortions for its employees, Citi has explicitly staked out its position to advance the liberal agenda of abortion on demand and has shown no regard for whether a particular state’s laws are in place to protect the safety of a woman and her child.¹⁶²

Second, the analysis documents how corporations speak for different motives and with different voices that are crafted by different factors. The decision to speak up on a contentious social or political issue seems to be driven mainly by strategic reasons, such as to appeal to a company’s employees, customers, or investors. However, the survey of Reacting Companies’ corporate statements reveals how the choice to take a strong political stance might be influenced by CEOs’ ideology. The implication of this heterogeneity is that corporate political statements do not allow

¹⁶⁰ Fairfax, *supra* note 70; Byrne, *supra* note 69.

¹⁶¹ Cheryl Munk, *On Roe v. Wade, Big Companies Already Have a Precedent for Effective Action*, CNBC (May 8, 2022), <https://perma.cc/G9LA-X9N8>.

¹⁶² *U.S. House Republicans Seek to Punish Citigroup over Abortion Feud*, REUTERS (Apr. 2022), <https://www.reuters.com/legal/transactional/us-house-republicans-seek-punish-citigroup-over-abortion-feud-2022-04-05/>.

for the identification of either who the corporation speaks for or what the company's political identity is. Furthermore, the analysis of the anti-abortion contributions discloses inconsistencies among corporate speeches, demonstrating how corporate sociopolitical activism does not filter out corporate hypocrisy. The result is that investors and other stakeholders are not able to distinguish authentic statements from hypocritical ones.

To conclude, the corporate response to *Dobbs* shows once again the need for greater transparency and disclosure around companies' political activities.¹⁶³ Directors and executives have virtually plenary authority on corporate political speech decisions, which they make without an input from the shareholders and mostly under shareholders' radar.¹⁶⁴ However, shareholders might have an interest in not being associated with political contributions they disagree with or at least in knowing whether corporate treasuries are used to fund ideological causes that they oppose.¹⁶⁵ More broadly, shareholders appear to be interested in engaging on social issues and having the company pursue their prosocial interests.¹⁶⁶ As a result, transparency around the procedure leading to the adoption of political statements would permit investors and other stakeholders to understand who is speaking and what the features of the company's political voice are. At the same time, disclosing corporate political spending would help both prevent and detect corporate hypocrisy. With that clarity, shareholders and other corporate constituencies will be able to decide whether they actually want corporations to participate more in social debates or to be quieter on issues unrelated to their business.

¹⁶³ Bebchuk & Jackson, *supra* note 23; John C. Coates IV, *Corporate Politics, Governance, and Value Before and After Citizens United*, 9 J. EMPIRICAL LEG. STUD. 657 (2012).

¹⁶⁴ Lucian A. Bebchuk & Robert J. Jackson, *Corporate Political Speech: Who Decides?*, 124 HARV. L. REV. 83 (2010).

¹⁶⁵ Bebchuk et al., *supra* note 23.

¹⁶⁶ For the shareholder welfare maximization criterion, see Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J. LAW FINANCE ACCOUNT. 247 (2017); Oliver D. Hart & Luigi Zingales, *The New Corporate Governance*, SSRN ELECTRON. J.